

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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Federal Communications Commission  
Office of the Secretary

In the Matter of  
  
Implementation of the  
Cable Television Consumer  
Protection and Competition  
Act of 1992  
  
Cable Home Wiring

MM Docket No. 92-260

**COMMENTS OF THE NATIONAL PRIVATE CABLE ASSOCIATION  
AND MAXTEL CABLEVISION**

The National Private Cable Association ("NPCA") and MaxTel Cablevision ("MaxTel") submit these comments in response to the Notice of Proposed Rulemaking ("Notice") in the captioned matter. NPCA is a trade association whose members provide video programming to multiple dwelling units and multiple building settings (collectively, "MDUs"), as well as to single family homes, via private and wireless cable facilities. MaxTel operates private cable facilities at numerous MDUs throughout the country, including apartment complexes, condominiums, prisons, and educational institutions, via satellite master antenna television systems.

The Commission has sought comments in regard to its mandate from Congress to "prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber." Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 102 Stat. \_\_\_, § 16(d), to be codified at 47 U.S.C. § 544(i). As the Commission recognized in

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its Notice, it is necessary to distinguish between wiring installed in single family homes and wiring installed in MDU's. Because MaxTel and the members of NPCA primarily serve MDU's, these comments will focus primarily on the installation of wiring in that setting.

A. Multiple Dwelling Units

As Section 16(d) states, the rules to be adopted by the FCC should apply to "cable installed by the cable operator within the premises of such subscriber." *Id.* (emphasis added). Cable service to an apartment complex or condominium often is provided pursuant to individual subscription agreements between the cable operator and each tenant receiving cable service.<sup>1/</sup> Thus, in such cases, Congress has limited the Commission's authority in this proceeding to formulating rules regarding the disposition of wiring installed within the private premises of the tenant, i.e., the wiring which runs from the wallplate to the subscriber's television. As the House Report states: "In the case of multiple dwelling units, this section is not intended to cover common wiring within the building, but only the wiring within the dwelling unit of individual subscribers." H.R. Rep. No. 628, 102d Cong., 2d Sess. (1992) at 119.

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<sup>1/</sup>The primary exception to such arrangements are bulk agreements in which the landlord purchases programming from the video provider in bulk for the benefit of the tenants. The distinction between the provision of service pursuant to bulk arrangements and the provision of service pursuant to individual subscriber agreements is not grounds for a distinction in the treatment of the wiring installed to provide the service.

The reason for this limitation on the scope of the Commission's rules is plain. An individual tenant has no authority to control the disposition of cable wiring used in common by all of the tenants, any more than it has authority to exercise exclusive dominion over any common areas or common amenities, such as hallways, party rooms, parking garages, or, in particular, utility lines. Such items are provided by the landlord for the benefit of all tenants and should remain available for their benefit. The tenant of an apartment building or condominium cannot reasonably expect to control the disposition of such facilities as are used in common by all tenants. Indeed, the exclusive dominion of an apartment dweller or condominium owner generally is understood to extend no further than the interior walls of his or her unit.<sup>2/</sup> Thus, the disposition of common wiring installed between walls or in other areas outside of an individual unit cannot be affected by an individual tenant's subscription to, or termination of, service.

With respect to such common wiring, any ruling in this proceeding would not only be contrary to congressional intent, but also unwise and possibly unconstitutional. For example, the ownership of common wiring presently installed in MDU's is a matter of state law, particularly the law of fixtures. In the case of a landlord who has contractually agreed that the a video provider will retain ownership of wiring upon the expiration of the

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<sup>2/</sup>Thus, the MDU occupant stands in contrast to the owner of single family home, who reasonably can expect to control the interior living space, the exterior walls, and the surrounding land to which she has title, absent some conveyance or other voluntary arrangement to the contrary.

contract, the common law will generally give force to such an agreement. If the Commission were to adopt rules inconsistent with such an agreement, it will literally take property from one party, the video provider, and give it to another, the landlord. Such a taking of private property requires, at a minimum, payment of just compensation to the video provider, to satisfy the requirements of the Fifth Amendment to the Constitution. Clearly, Congress did not intend for the Commission to become entangled in such matters.

Even in the absence of a written agreement between the video provider and the landlord, the common law of fixtures will dictate that either one party or the other owns wiring which is presently installed in MDU's. The adoption of a rule which, in any given case, conflicts with an existing and otherwise valid claim of ownership likewise will work a taking in that particular case. Thus, should the Commission adopt rules with respect to common wiring installed within MDU's, they must be prospective only, so as not to interfere with existing property rights.

As noted, however, Congress did not intend the Commission to deal with common wiring installed in MDU's, even prospectively. Landlords and video providers can negotiate with respect to the issue of disposition of wiring upon termination of an access contract, and there is no need for the Commission to interfere with the market forces which can be relied upon to dictate an efficient result.<sup>3/</sup> Under federal law, access to MDU premises is a matter

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<sup>3/</sup>This differs in the case of a single family homeowner who has no real ability to negotiate regarding the terms of his or her agreement with the cable operator.

of private negotiation and disposition of wiring is just one aspect of access.

Finally, the interests of subscribers will be unaffected if the issue of common wiring in MDU's is left to market forces. Consumer demand will insure that video programming, whether offered by a franchised, private, or wireless cable operator, is provided. Ownership of the common wiring is simply not relevant to seeing that consumer demand is satisfied.

With respect to the MDU wiring which Congress did intend the Commission to reach, i.e., wiring between the wallplate and the television set, it is worthwhile to note that an MDU occupant who has terminated service presumably will have no use for the wiring if the tenant is remaining in the unit. If the tenant is terminating service because she is moving to a new residence, it is by no means certain that the type or amount of wiring used at the old residence will be suitable for the new one. Indeed, it is likely that an MDU tenant will have no desire to take the used wiring with her. Thus, in any case, permitting the video provider to retain ownership of cable installed within the interior of an MDU unit appears to be a reasonable approach which also might prove beneficial to future occupants of the unit. Given the relatively minor amount of wiring involved, however, the Commission's ruling with respect to wiring installed within an individual MDU unit is not one likely to cause serious disruption, regardless of how resolved.

#### B. Single Family Homes

Installation of cable in a single family house often is conditioned upon the individual subscriber signing a form service agreement that is pre-printed and used universally by the video provider when contracting with individual subscribers. Upon termination of service, the video provider may claim ownership of wiring on the basis of language contained in the service agreement purporting to guarantee the video provider ownership of, and the right to remove, all facilities it installed. Since the service agreements are rarely, if ever, the subject of negotiation, single family home owners may find themselves subject to a literal interpretation of the boilerplate ownership language.

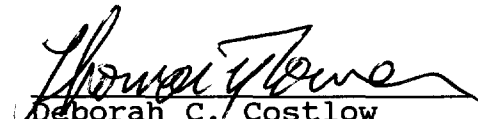
In such cases, the terminated video provider would claim the right to cause the significant disruption and expense which is attendant to the removal of wiring, particularly wiring installed within walls. In addition, video providers have sought to use the ownership language as a means of preventing single family home owners from obtaining video programming from an alternative provider. In such cases, competition may be discouraged if the incumbent video provider is permitted to retain ownership of wiring on the basis of boilerplate contractual language.

While these concerns should guide the Commission in its rulemaking, the constitutional concerns discussed in the context of MDU's above would seem equally applicable in the case of wiring installed in single family homes.

**CONCLUSION**

For the foregoing reasons, NPCA and MaxTel respectfully request that the Commission adopt rules consistent with the above.

Respectfully submitted,

  
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